

MEETING MINUTES, BOARD OF ZONING APPEALS, AUGUST 25, 2008

Present: Phil Tinkle, Alford Kessinger, Shan Rutherford, Bill Peeples, Senior Planner; Jay Isenberg, Asst. City Attorney, and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

PREVIOUS MINUTES

August 11th – Kessinger moved to approve the minutes as mailed, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

FINDINGS OF FACT

Docket V2008-011 – Dimensional Variance – 1023 Monticello Ct. – It was noted that on the second page, #5, the distance should be amended from 4.7 miles to 1.7 miles. Kessinger moved to amend the findings of fact as noted, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Kessinger moved that in consideration of the statutory criteria that we adopt the written Findings of Fact as presented, and amended, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2008-011, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2008-013 – Dimensional Variance – Pointe at Smith Valley – It was noted that on the first page, second paragraph, Nick Kirkendall's name should be corrected. Kessinger moved to amend the findings of fact as noted, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that in consideration of the statutory criteria that we adopt the written Findings of Fact as presented, and amended, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2008-013, seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

OLD BUSINESS

Docket V2008-012 – Use Variance – Sam's Fuel Station – located on N. Emerson, in front of Sam's Club - request to allow construction of gas station and carwash in the I-65 Overlay Zone – Sam's East, Inc., petitioner; Steve Huddleston, attorney, representing.

Steve Huddleston, Attorney; Pat Bennett, Core States Engineering; and members of the audience were sworn.

Aerial of the site was presented for the Board's review. Also presented was a proposed site plan showing ingress and egress. Architectural renderings of the proposed building were shown. The proposed station will not service the public, only members of Sam's Club may purchase gasoline at the site by using their membership card. There will be no products for sale, only gasoline. There will be no pole signs and no gas prices advertised other than small signs on the pumps. Previously a site plan was approved for this site, however, the approval has expired. At the time of the original approval gas stations were allowed in the Overlay Zone. Earlier this year an ordinance was passed prohibiting them from being located in the Overlay Zone. Huddleston stated his client is in agreement with the proposed condition that if Sam's Club ceases operations, the fuel station will be removed and the site will be returned to an undeveloped state.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The proposed gasoline service station would be located within an area that is predominately commercial in nature. The lot would not have direct access to Emerson Avenue; in fact, the entry point to the gasoline station would be

along a private drive more than 220 feet from, and parallel to, Emerson Avenue. Additionally, the petitioner has indicated that this use would be reserved for members of Sam's Club, and not accessible by the general public. Though it is reasonable to assume that some general public traffic would attempt to use the service, the volume of traffic and the site design preclude any impacts to the functioning of Emerson Avenue; therefore, the use would not affect traffic safety along this heavily used arterial. Members only are allowed to purchase gasoline, not the general public.

2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The property would be developed commercially and located in an area that is developed with commercial uses. The proposal would have to go through the Commercial Site Plan process and be reviewed by the I-65 Overlay Committee prior to the commencement of construction. The only impact that the use should have relates to an increase in traffic on the site, which, historically, is not considered adverse to adjacent commercial properties.
3. **Criteria:** The need for the Variance arises from some condition peculiar to the property involved. **Answer:** The property was purchased, was subject of a commercial site development plan petition, and was permitted for a gasoline service station, prior to the enactment of regulation prohibiting that use.
4. **Criteria:** The strict application of the terms of the Zoning Ordinance could constitute an unnecessary hardship if applied to the property for which the variance is sought. **Answer:** The petitioner purchased this property for the express purpose of constructing this use on the property prior to 2005. Commercial Site Plans were approved and a Land Alteration Permit (LAP) for the construction of this use was issued. The petitioner was notified twice that the permit was issued, but never retrieved it. On April 26, 2007, the permit expired. On January 21, 2008, the Common Council approved an amendment to the I-65 Overlay District which prohibited the construction of gasoline service stations in the Overlay District. Therefore, the unusual hardship, from the perspective of the petitioner, is that they are now unable to use a property, purchased specifically for the proposed purpose, as a gasoline service station, a use permitted and approved subsequent to their purchase.
5. **Criteria:** The approval does not interfere substantially with the Comprehensive Plan. **Answer:** The Comprehensive Plan calls for commercial uses and does not recommend excluding gas stations.

The floor was opened for remonstrance. Tony Abbott, Attorney, came forward representing the Greenwood Sunoco, 1065 Southpark Drive, Greenwood, IN.

Booklets were distributed by Attorney Abbott. He gave a brief overview of surrounding properties of the Sam's site. He indicated that in addition to himself representing Sunoco, also in attendance as remonstrators were representatives of Shell Gas Station and Marathon Gas Station (Village Pantry). He then asked Sunoco property owner Gurpeet Malhi to come forward. Mr. Malhi stated he is opposed to granting of this variance. He feels it will affect the value of adjacent properties and have a negative effect on his business. Attorney Abbott stated he felt Sam's could not meet both statutory criteria #3 and #4.

Steven Larkin, Vice President, Village Pantry Real Estate, came forward. He stated he is also opposed to the granting of this variance. He felt that by installing gas pumps at Sam's Club it would increase their membership, thereby allowing them to sell more gasoline and affect surrounding gas stations in the area.

Huddleston then gave rebuttal. He stated that the reason the approval for the original site plan lapsed was due to an environmental issue. That is why the building permit was never obtained. He presented a copy of the Sunoco deed showing that Mr. Malhi purchased the station in September of

2007. Huddleston pointed out that when Mr. Malhi bought the station he was aware that at that time gas stations were permitted in the Overlay Zone.

Larkin gave rebuttal. He stated again he is in opposition to the variance because it will increase the number of gas stations in the area.

Tinkle stated he was a member of the Plan Commission when the original site plan was approved back in 2005. Originally Sam's proposed to build the gas station on the north side of their property. The Plan Commission felt a better location would be along the south side of the property. That is why this site was rezoned to commercial and then given site plan approval.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board approve the granting of a use variance to allow construction of a gas station and carwash in the I-65 Corridor Overlay Zone, with the following conditions:

- 1) Should Sam's Club cease operating, the gasoline service station and car wash shall be removed and the property returned to the current undeveloped state.
- 2) Prohibit all outside sales of products other than fuel and storage/display of any products.

Seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2008-012, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

NEW BUSINESS

Docket V2008-014 – Use Variance – T-Mobile – located at 1244 W. Fry Rd. – request to allow cell tower to be located in an R-1 Single Family Residential zone – T-Mobile Central, LLC, applicant; City of Greenwood, owner.

Steve Carr, petitioner, came forward and was sworn.

Booklets were presented by Carr. Access to the tower will be from Fry Road. Carr stated that when researching Greenwood for a proposed site for the tower he felt this would be a good location because already existing are station #2 of the Greenwood Fire Dept, the city's mulch area, tornado siren and the old sewage treatment plant. There will be fencing and landscaping around the proposed site. There will be lighting on the pole. The height of the pole will be 150'.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The proposed communication facility does not create air, water, or noise pollution. The monopole and associated equipment will be constructed in accordance with the required structural codes. The general welfare of the community should be enhanced by more reliable wireless communication and E911 coverage. Only once or twice a month will someone have to visit the site. The tower will not affect

neighbor's radio or television reception, nor will it affect the Fire Department's communication system.

2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The property is currently improved with a municipal fire station and used occasionally as a location to process mulch for the municipal park service. The addition of this communications facility to the site will be in an area behind the existing building, thereby screening the use somewhat from the single-family residential uses south of Fry Rd. The remaining residential uses are effectively screened by the existing vegetation or by the distance from the proposed site.
3. **Criteria:** The need for the Variance arises from some condition peculiar to the property involved. **Answer:** In order to maintain adequate and reliable wireless communication services, a facility must be located within an area that is largely residential both in zoning and character. Since wireless communication facilities are permitted only in commercial and industrial districts, it is difficult to locate sites in areas developed and zoned residentially. That this site is zoned residential, but improved with a non-residential use, is the peculiar condition that makes the property suitable for communication facility co-location.
4. **Criteria:** The strict application of the terms of the Zoning Ordinance could constitute an unnecessary hardship if applied to the property for which the variance is sought. **Answer:** It would be nearly impossible to locate a wireless communication facility on a property in this area that would ensure adequate and reliable service.
5. **Criteria:** The approval does not interfere substantially with the Comprehensive Plan. **Answer:** The Comprehensive Plan proposes institutional uses for the site, which is consistent with the historic use of the property and with the proposed use.

The floor was opened for remonstrance. William Johnson, 1171 Fry Rd., Grwd came forward. He stated he is opposed to granting of this variance because he fears it will interfere with television reception, etc. at his home located across Fry Road.

Carr then came forward for rebuttal. He assured Mr. Johnson that there will not be interference with either his television, nor the fire department's various receptions.

Tinkle pointed out that the city has approved at least 2 other cell towers over the years.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Kessinger moved that based on the evidence presented that the Board approve the granting of a use variance to allow a cell tower in an R-1 Single family residential zone, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2008-014, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Kessinger. Vote for **approval** was unanimous, 3-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

Kessinger moved to adjourn, seconded by Rutherford. Vote for **approval** was unanimous, 3-0.
Motion carried. Meeting was adjourned at 7:15 p.m.

JANICE NIX
Recording Secretary

PHIL TINKLE
Chairman